

**TRIBAL CONSULTATION PROTOCOL
BETWEEN
THE UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE
AND
THE GRAND PORTAGE BAND OF LAKE SUPERIOR CHIPPEWA**

This Tribal Consultation Protocol implements Stipulation 2, Parts A and B. (State Agreements and Tribal Consultation Protocols; American Indian Tribal Consultation Protocols) of the Programmatic Agreement (PA) among the United States Department of Agriculture Natural Resources Conservation Service, the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers, relative to conservation assistance on private and public lands.

The purpose of this agreement is to facilitate Minnesota Natural Resources Conservation Service conservation activities and to comply with Federal and State laws and regulations pertaining to cultural resources on all lands of the Grand Portage Band within reservation boundaries and all lands within the 1854 Treaty boundaries (Treaty with Mississippi and Lake Superior Bands).

The Minnesota Natural Resource Conservation Service (hereinafter called MN NRCS) and the Grand Portage Band of Lake Superior Chippewa agree that execution of this Protocol provides for implementation of policies and procedures developed by the MN NRCS to more effectively assure that effects of conservation activities on cultural resources within the exterior boundaries of American Indian Reservations are thoroughly considered in the earliest planning stages and that cultural resource protection is accomplished as efficiently as possible.

WHEREAS, the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) recognizes the status of the Grand Portage Band of Lake Superior Chippewa (hereinafter called the Band) as a Sovereign Nation and a federally recognized Indian tribe with direct ties to lands within Minnesota; and

WHEREAS, the NRCS provides financial assistance to private landowners, American Indian Tribes, municipalities, counties, state, and federal agencies; and

WHEREAS, the NRCS has determined that NRCS programs providing financial assistance may result in effects to historic properties included in, or eligible for inclusion in the National Register of Historic Places (National Register); and

WHEREAS, the Nationwide Programmatic Agreement (Exhibit 1) allows NRCS to comply programmatically with its obligations under Section 106 and 110 (f) of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f) and requires Natural Resources Conservation Service to follow its policies and procedures for protecting cultural resources issued in the General Manual (GM) 420, Part 401 "Cultural Resources [Archeological and Historic Properties]" (Exhibit 2), the NRCS National Cultural Resources Handbook 190, Part 601.62; and

WHEREAS, the Grand Portage Band Tribal Council wishes to consult on NRCS undertakings in accordance with the National Historic Preservation Act (NHPA)(16 U.S.C. 470f) and the standard operating procedures of the Grand Portage Band Land Use Ordinance.

WHEREAS, the NRCS has consulted with the Grand Portage Band Tribal Council pursuant to 36 CFR 800.2(c)(1)(i) of the regulations implementing Section 106 of the National Historic Preservation Act (NHPA), 16 USC 470f; and

WHEREAS, the NRCS and the Band wish to develop an agreement to expedite the compliance process, speed delivery of conservation, and protect cultural resources, including traditional cultural and spiritual places; and

WHEREAS, the MN NRCS has consulted with the Band pursuant to GM 420 Part 401.33; and

WHEREAS, the definitions given in GM 420 Part 401.2 are applicable throughout this state level agreement;

THEREFORE, the Minnesota NRCS and the Band agree to the following stipulations and will ensure that they are implemented:

STIPULATIONS

I. COMMUNICATION

- A. For the purpose of signing of the Tribal Protocol, modifications to the Protocol, and/or annual reporting, the MN NRCS State Conservationist will communicate directly with the Band's Tribal Government.
- B. For the purpose of developing or reviewing the Protocol procedures or questions on MN NRCS cultural resources policy, the Band's Cultural Resources Staff will communicate directly with the MN NRCS Cultural Resources Specialist (CRS).
- C. For the purpose of project compliance activities, MN NRCS CRS will communicate directly with the Band's Cultural Resources Staff for concurrence determinations of effect and eligibility.
- D. Whenever possible, MN NRCS and the Band's Cultural Resources Staff will utilize electronic mail to communicate to increase efficiency and provide improved cultural resources compliance and protection. However, all formal compliance correspondence and final reports will be submitted in hard copy with appropriate signatures by MN NRCS. All return correspondence from the Band's Cultural Resources Staff to MN NRCS will be hard copy with appropriate signatures.
- E. Cultural resource and producer information is not subject to the Freedom of Information Act (FOIA). Section 304 of the NHPA and other Federal laws and program requirements limits public access to information concerning a producer, an undertaking, and its effect on cultural resources.

II. NRCS RESPONSIBILITIES

- A. MN NRCS State Conservationist is the responsible Federal Official for cultural resources compliance and the protection of cultural resources in all MN NRCS activities.

- B. MN NRCS District Conservationists (DC) are responsible at the Field Office level for implementing MN NRCS cultural resources policies and procedures, and the compliance process outlined in this Protocol.
- C. The CRS will oversee the MN NRCS cultural resources review process and will coordinate directly with the NRCS DCs and the Band's Cultural Resources Staff.
- D. Any cultural resources work conducted by the MN CRS on any lands of the Band's will be conducted only in cooperation with and authorization from the Band's Tribal Council or Cultural Resources Staff.
- E. The Minnesota NRCS further agrees that access to specific site location data will be restricted to the Cultural Resources Specialist (CRS).
- F. MN NRCS CRS must have an advanced degree in archeology, or in architectural history, historical architecture or history with an archaeology minor, and meet other academic and experience requirements for his/her discipline as found in *Archaeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines, Federal Register* 1983, Vol. 48, No. 190, pages 44738-44739. MN NRCS CRS will document that they have met the above requirements in a vita on file with the Band's Tribal Council and/or Cultural Resources Staff.
- G. The CRS shall be responsible for:
 - 1. Formulating state MN NRCS cultural resource guidance and procedures as it relates to consultation with Federally Recognized American Indian Tribes.
 - 2. Providing technical assistance in erosion control and protection of eroding cultural resources when requested by the Band's Tribal Council or Cultural Resources Staff and as time and staff resources permit. Requests will be coordinated directly through the CRS.

III. GRAND PORTAGE BAND RESPONSIBILITIES:

- A. The Band agrees to review compliance documentation on undertakings as specified for cultural resource review in Exhibit 3 (Conservation Practices Classification). The Band's Cultural Resources Staff further agrees to comment in writing regarding the undertakings within 60 days of receipt of the Initial Review Request. Failure of the Band's Cultural Resource Staff to respond to the initial review request within 60 days may be construed to indicate that no adverse effects are expected from the proposed undertakings.

IV. USE OF NRCS FIELD OFFICE PERSONNEL

MN NRCS provides formal and informal cultural resources training to NRCS field office personnel and conservation district staff that has professional expertise other than cultural resources. NRCS Field Office personnel may accompany the NRCS CRS when assisting the Band in cultural resource management efforts, or may accompany the Band's Cultural Resources Staff if the Band's Cultural Resources Coordinator approves.

V. TRAINING

- A. MN NRCS will integrate cultural resources conservation and education for producers and landowners into the planning and assistance process statewide. MN NRCS will assist the

Band with cultural resources training or with training regarding NRCS programs if the Band wishes.

- B. MN NRCS will offer cultural resources training to county conservation district personnel, Farm Service Agency personnel, Rural Development personnel, Tribal Government personnel, State Agencies, and personnel from other cooperating agencies or other groups. This training will occur when it is officially requested, when it will benefit and support MN NRCS conservation mission, and when staff schedules allow.
- C. The Band's Training Responsibilities: Grand Portage Cultural Resources Staff or other interested band members are encouraged to participate in MN NRCS training programs (i.e. as participants, instructors, group leaders, guest lecturers, etc.).

VI. NATIONAL EXEMPTIONS

This Protocol acknowledges the appropriateness of, and implements Stipulation 3, National Exemptions as found in the Nationwide Programmatic Agreement (EXHIBIT 1).

VII. MINNESOTA PRACTICES EXEMPTED FROM CASE-BY-CASE REVIEW

EXHIBIT 3 of this Protocol identifies:

- MN NRCS practices and/or programs exempted from case-by-case review, as appropriate to the cultural, historical, and ecological conditions designated by the Band's Tribal Council. These practices are primarily management related or will have minimal physical affect or impact on cultural resources.
- Those practices considered undertakings and presumed to have the potential to impact cultural resources.

VIII. COMPLIANCE ACTIVITIES AND DOCUMENTATION

- A. MN NRCS field office personnel will determine if conservation activities are subject to the Band's Cultural Resources Staff review based on Stipulation VII (National Exemptions) and EXHIBIT 3 of this Protocol. Cultural Resources Reviews will be sent to the Band's Cultural Resources Staff in the earliest possible stages of the planning process.
 - 1. If not subject to review by the Band's Cultural Resources Staff, the DC will document this decision at the field office level and proceed with the activity.
 - 2. If the activity is subject to review by the Band's Cultural Resources Staff (considered an undertaking in accord with this Protocol), MN NRCS field office personnel will provide the following information to both the MN CRS and the Band's Cultural Resources Staff to assist in their determination of acceptable work on NRCS undertakings:
 - MN-CPA-048 Review Request Form (includes project location data (county, township, range, section and quarter section), description of ground or vegetation disturbing activity, NRCS Program, etc (see Exhibit 4).
 - Labeled photocopy of a section of the appropriate USGS 7.5-minute quadrangle map with the practice location or project area where ground disturbance will occur delineated or highlighted

- Aerial photographs depicting in detail where the conservation practice(s) will be implemented.
- a. The Band's Cultural Resources Staff will notify the NRCS DC and/or the NRCS CRS of the outcome of their review via letter, email, or verbally, within the time frame allotted in this Protocol (i.e. 60 days). If the review period has elapsed, a determination of no adverse effect will be documented and implementation of the conservation practice will proceed. It is the responsibility of the Band's Cultural Resources staff to notify the 1854 Treaty Authority as part of their project review.
- b. The DC will notify the CRS of all project review outcomes whether or not they are received in writing from the Band's Cultural Resources Staff. The DC will file all compliance documentation in the producer's file. The CRS will file all compliance documentation in their county files for reporting purposes.
- c. If an archaeological survey is recommended by the Band's Cultural Resources Staff, the Band's Cultural Resources Staff can perform the survey with or without assistance from NRCS Field Office personnel or the NRCS CRS.
- d. If cultural resources are discovered during the planning phase of a project as a result of a field reconnaissance visit or archaeological survey, the Band's Cultural Resources Staff will contact the NRCS CRS to discuss treatment options for the resource.

IX. HUMAN REMAINS

If human remains are discovered in the area of potential effect (APE) during planning or implementation of a conservation practice, all activities will cease and the Office of the State Archaeologist and the Band's Cultural resources Staff will be notified in accordance with the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) and in accordance with the Private Cemeteries Act (Minnesota Stat. Ann. 307.08) and the Band's tribal ordinances and policies.

X. CURATION

When archaeological or historic material remains are recovered during the course of NRCS activities on Grand Portage lands, recovered materials are the property of the Band. Curation of recovered materials will be the responsibility of the Band with assistance from NRCS when necessary. NRCS has no jurisdiction over federal lands within the boundaries of Band. If materials are recovered during the course of an NRCS sponsored or assisted data recovery effort, the NRCS will ensure that appropriate analysis of all recovered materials are completed prior to returning them to the owners. Associated records that are prepared or assembled in connection with a federally authorized cultural resources survey, excavation, or other study, regardless of the location of the resource, become the property of the Band.

XI. COMPLIANCE DOCUMENTATION

The Minnesota NRCS shall ensure that reports on all activities carried out pursuant to this agreement are provided to the Band's Cultural Resources Staff and, upon request, to other interested parties (subject to restrictions contained in Section 304 of the National Historic Preservation Act and Section 9(a) of the Archaeological Resources Protection Act).

XII. POST REVIEW DISCOVERIES

- A. MN NRCS will follow 36 CFR 800.13 for all post-review discoveries. This includes when cultural resources are discovered or unanticipated effects on cultural resources are found before or after MN NRCS has completed the section 106 process.
- B. MN NRCS DC will inform producers of discovery procedures in writing. In a discovery situation during MN NRCS administered undertakings:
 - 1. If previously unidentified cultural resources are encountered during implementation of a practice, all work shall cease immediately in the area of discovery and MN NRCS personnel shall notify the Band's Cultural Resources Staff and the NRCS Cultural Resources Specialist, and SHPO, if appropriate. The CRS will notify the MN NRCS State Conservationist within 48 hours.
 - 2. The Band's Cultural Resources Staff, and the NRCS CRS, will evaluate the discovery for the NRHP eligibility; determine potential effects and treatment options, and consult on treatment options.
 - 3. In the case of adverse effects to cultural resources, the MN NRCS State Conservationist and MN NRCS CRS will notify and consult with the Band's Tribal Council, ACHP, and other affected parties (if necessary).
- C. If the discovery includes human remains, consultation will be carried out in accordance with Stipulation IX.

XIV. TRADITIONAL CULTURAL PROPERTIES, SACRED SITES AND CEREMONIAL RITES

Traditional cultural properties, sacred sites and ceremonial rites shall be treated in the same manner as other cultural resources. Priority will be given to site avoidance.

XV. EMERGENCIES

The following procedures will be implemented during an emergency declared by the President of the United States, the Governor of Minnesota, a Tribal Official on a Reservation, the MN NRCS State Conservationist, or other authorized individual, in accord with 36 CFR 800.12 and as outlined in the NRCS National Watershed Manual, Part 509, Emergency Watershed Protection and in Exhibit 5. These procedures will ensure that the need to protect life and property is accomplished while taking cultural resources into account to the maximum extent congruent with rapidly changing priorities and circumstances. These emergency situations are of two types, with separate compliance processes.

- A. Normal Emergency Activities include those declared by the MN NRCS State Conservationist, Tribal Government, or President of the United States. During Normal Emergency Activities MN NRCS CRS will make decisions for treatments to cultural resources in consultation with the Band's Tribal Council. Conservation practices required in these areas will be inventoried or monitored. The Band's Tribal Council will have fourteen days to review MN NRCS reports in these situations instead of the regular 30 days as defined in 36 CFR 800.12 (b) (2).
- B. Urgent and Compelling Situations require that work be initiated within five days to save life or property. Regarding these situations, 36 CFR 800.12 (d) states, "Immediate rescue and salvage operations conducted to preserve life and property are exempt from the

provisions of Section 106 and this part.” In these declared disaster situations, MN NRCS shall proceed with the undertaking and MN NRCS CRS shall notify the Band’s Tribal Council or Cultural Resources staff as soon as possible after the situation has been identified and accepted as urgent and compelling. The waiver may be invoked in only a limited range of circumstances involving major natural disaster or imminent threat to life or property. Notification should include a description of the circumstances creating the urgent and compelling situation, work to be undertaken, geographic area to which the waiver applies, and any consideration of cultural resources already completed or planned to be completed. MN NRCS CRS will be responsible to document and avoid adverse effects to cultural resources encountered during urgent and compelling work to the fullest extent practical.

XVI. TRIBAL LANDS

Any provisions of this agreement shall take into consideration the terms of any agreements between NRCS and Indian tribes in accordance with Subpart B, 36CFR800.3.

XVIII. ANNUAL REVIEW

- A. The MN NRCS and the Band will annually discuss the Protocol and any problems or unexpected issues encountered.
- B. MN NRCS will provide the Band with a current list of conservation practices.
- C. Based on this review, the Band and the MN NRCS shall determine whether this Protocol will continue in force, be amended, or be terminated.

XIX. AMENDMENTS

This agreement may be amended upon the request of either party. The parties will consult in accordance with NRCS GM 420, Part 401 to consider such amendments.

XX. DURATION

Either party may terminate this agreement at any time if, after a good faith effort to negotiate, parties do not concur. The agreement may be terminated by providing thirty (30) days written notice to the other party.

NATURAL RESOURCES CONSERVATION SERVICE

By: _____, **Date** _____
STATE CONSERVATIONIST FOR MINNESOTA

GRAND PORTAGE BAND OF LAKE SUPERIOR CHIPPEWA

By: _____, **Date** _____
TRUST LANDS ADMINISTRATOR

By: _____, **Date** _____
GRAND PORTAGE TRIBAL CHAIRMAN

Exhibit 1:

**Nationwide Programmatic Agreement among the United States
Department Agriculture Natural Resources Conservation Service, the
Advisory Council on Historic Preservation and the National
Conference of State Historic Preservation Officers**

Can be viewed at:

http://www.nrcs.usda.gov/technical/ECS/culture/PA_31.pdf

Exhibit 2:

NRCS General Manual 420, Part 401 - Cultural Resources (Archeological and Historic Properties) & Part 601 - Cultural Resources

Can be viewed at:

http://policy.nrcs.usda.gov/scripts/lpsiis.dll/GM/GM_420_401.htm

Exhibit 3:

Classification of Conservation Practices

Activities and Conservation Practices in Minnesota will be classified as undertakings or exempt practices. Practices which are not listed are considered undertakings and are presumed to have the potential to impact historic properties/cultural resources. New activities and practices may be added to the list and review classifications may be changed by amendment to this document.

EXEMPT PRACTICES (NOT GROUND DISTURBING):

Practices listed as not ground disturbing are not considered undertakings and no cultural resources actions are required for their installation (no review). These practices are primarily management related practices which will not have any physical effects and will not alter a cultural resource.

UNDERTAKINGS (GROUND DISTURBING):

These practices and activities are presumed to have the potential to impact cultural resources and are considered undertakings.

Copies of quad maps showing the area of potential effect for the practices will be submitted to the Grand Portage Cultural Resources Staff and the NRCS Cultural Resources Specialist for review. The quad maps shall be photocopied according to the following instructions.

1. Copy on a 8.5 x 11 sheet of paper
2. Copy at least one setting darker than the normal setting
3. Center the section where the practice is to be installed in the center of the page
4. Orient the quad so that north is at the top of the 8.5 by 11" copy page (portrait).
5. Do not enlarge or reduce the copy.
6. Label the quad map at the bottom of the copy. Information on the label should include:
 - County
 - Quad name
 - Landowner's name
 - Township
 - Range
 - Section
 - Quarter section
7. Locate and highlight the Area of Potential Effect on the quad as well as any other areas that may be disturbed (e.g. borrow areas, equipment storage, etc.)

Conservation Practice	Code	Exempt	Undertaking
Access Road (ft)	560		■
Alley Cropping (ac)	311	■	
Anaerobic Digester-Controlled Temperature (no)	366	■	■
Animal Mortality Facility (no)	316		■
Animal Trails and Walkways (ft)	575		■
Biofilter	795	■	
Brush Management (ac)	314*	■	■
Channel Bank Vegetation (ac)	322	■	
Clearing and Snagging (ft)	326	■	
Closure of Waste Impoundments (no)	360	■	
Composting Facility (no)	317	■	
Conservation Cover (ac)	327	■	
Conservation Crop Rotation (ac)	328	■	
Contour Buffer Strips (ac)	332	■	
Contour Farming (ac)	330	■	
Cover Crop (ac)	340	■	
Critical Area Planting (ac)	342	■	
Cross Wind Ridges (ac)	589A	■	
Cross Wind Trap Strip (ac)	589C	■	
Dam (no., ac , ft)	402		■
Deep Tillage (ac)	324		■
Dike (ft)	356		■
Diversion (ft)	362		■
Drainage Water Management	554	■	
Dry Hydrant (ea)	432		■
Early Successional Habitat Development/Mgt. (ac)	647	■	
Fence (ft)	382	■	
Field Border (ft)	386	■	
Filter Strip (ac)	393*	■	■
Firebreak (ft)	394*	■	■
Forage Harvest Management	511	■	
Forest Site Preparation (ac)	490*	■	■
Forest Stand Improvement (ac)	666	■	
Forest Trails and Landings (ac)	655		■
Grade Stabilization Structure (no)	410		■
Grassed Waterway (ac)	412	■	
Heavy Use Area Protection (ac)	561		■
Hedgerow Planting (ft)	422*	■	■
Herbaceous Wind Barriers (ft)	422A	■	
Irrigation System, Sprinkler (no & ac)	442	■	
Irrigation Water Management (ac)	449	■	
Lined Waterway or Outlet (ft)	468		■
Manure Transfer	634		■
Mine Shaft and Adit Closing (no)	457		■
Mulching (ac)	484	■	
Nutrient Management (ac)	590	■	
Conservation Practice	Code	Exempt	Undertaking

Obstruction Removal (ac)	500		■
Open Channel (ft)	582		■
Pasture and Hay Planting (ac)	512	■	
Pest Management (ac)	595	■	
Pipeline (ft)	516*	■	■
Pond (no)	378		■
Pond Sealing or Lining, Bentonite Sealant (no)	521C	■	
Pond Sealing or Lining, Flexible Membrane Lining (no)	521A	■	
Prescribed Burning (ac)	338	■	
Prescribed Grazing (ac)	528A	■	
Pumping Plant (no)	533		■
Range Planting (ac)	550	■	
Recreation Area Improvement (ac)	562		■
Residue Management, Mulch Till (ac)	329B	■	
Residue Management, No Till and Strip Till (ac)	329A	■	
Residue Management, Ridge Till (ac)	329C	■	
Residue Management, Seasonal (ac)	344	■	
Restoration and Management of Declining Habitats (ac)	643	■	
Riparian Forest Buffer (ac)	391*	■	■
Riparian Herbaceous Cover (ac)	390*	■	■
Roof Runoff Management (no)	558	■	
Runoff Management System (no/ac)	570	■	
Sediment Basin (no)	350		■
Sinkhole Treatment	725		■
Spoil Spreading (ac)	572	■	
Spring Development (no)	574		■
Stream Channel Stabilization (ft)	584		■
Stream Crossing (no)	578		■
Stream Habitat Improvement (ft)	395		■
Streambank and Shoreline Protection (ft)	580		■
Stripcropping (ac)	585	■	
Structure for Water Control (no)	587		■
Subsurface Drain (ft)	606*	■	■
Surface Drainage, Field Ditch (ft)	607		■
Surface Drainage, Main or Lateral (ft)	608		■
Terrestrial Invasive Plant Species Pest Mgmt.	797	■	
Terrace (ft)	600		■
Tree/Shrub Establishment (ac)	612*	■	■
Tree/Shrub Pruning (ac)	660A	■	
Underground Outlet (no)	620*	■	■
Upland Wildlife Habitat Management (ac)	645*	■	■
Use Exclusion (ac)	472*	■	■
Vegetative Barrier (ft)	601*	■	■
Waste Facility Cover (no)	367	■	
Waste Storage Facility (no)	313		■
Waste Treatment		■	
Wastewater Treatment Strip	635	■	
Waste Utilization (ac)	633	■	
Conservation Practice	Code	Exempt	Undertaking
Water and Sediment Control Basin (no)	638		■

Water Harvesting Catchment (no)	636	■	■
Water Well (no)	642*	■	■
Watering Facility (no)	614	■	
Well Decommissioning (no)	351	■	
Wetland Creation (ac)	658*	■	■
Wetland Enhancement (ac)	659*	■	■
Wetland Restoration (ac)	657*	■	■
Wetland Wildlife Habitat Management (ac)	644*	■	■
Windbreak/Shelterbelt Establishment (ft)	380*	■	■
Windbreak/Shelterbelt Renovation (ft)	650*	■	■

Practices in Bold are reviewed by MN NRCS CRS and are not reviewed by SHPO for Section 016 purposes. NRCS CRS has Section 106 approval on these practices.

*Indicates practices that can be considered as Undertakings or as Exempt depending on the level of impacts, location and depth of disturbance, borrow area location, and based on discussions, when necessary, between Field Office personnel and the MN CRS.

Exhibit 4:

MN-CPA-048

NRCS Cultural Resources Initial Review Request Form

Form can be found at:

<http://efotg.nrcs.usda.gov/references/public/MN/mncpa48.doc>

CULTURAL RESOURCES INITIAL REVIEW REQUEST

USDA, Natural Resources Conservation Service -- Minnesota

Service Center: _____ Date: _____

Contact Person: _____ Phone: _____ Ext.: _____

Area of Proposed Ground Disturbance:

County: _____ Quad Name: _____

Owner/Operator/Tribe: _____ Current Land Use: _____

Township _____ N _____ Range _____ ☐ W or ☐ E Section _____ Quarter Section _____

USDA Funding: ☐ CRP ☐ CREP ☐ EQIP ☐ WHIP ☐ WRP ☐ CSP ☐ EWP ☐ ECP ☐ CTA ☐ Other

If other or CTA, explain NRCS involvement: _____

Practice: _____ Practice Code: _____

Describe Ground Disturbing Activity: _____

Estimated Depth
of Disturbance: _____

Has the area been Previously Disturbed? ☐ Yes ☐ No Explain: _____

Acres of Proposed Ground Disturbance: _____ Planned Construction Date: _____

Historic Wetland: ☐ Yes ☐ No Tile Present: ☐ Yes ☐ No Hydric Soils: ☐ Yes ☐ No

Discussion with Owner/Operator:

Is the owner/operator aware of any prehistoric remains (i.e., projectile points, potsherds, or mounds) or historic structural remains (i.e., old farmsteads, mills, mines, or logging camps) that occur or have occurred in the area of proposed ground disturbance? Describe.

NRCS Personnel Project Site Visit:

Individual: _____ Date : _____

Percent ground visibility: _____ Ground Cover: _____

Were any artifacts or structural remains observed during preliminary site visits?

Send the completed form and labeled map to:

Grand Portage Band
Norman Des Champe
Tribal Chairman
P.O. Box 428
Grand Portage, MN 55605

Grand Portage Band
Environmental Department
Attn: Curtis Gagnon
P.O. Box 428
Grand Portage, MN 55605

Copy the completed form to:

Pat McLoughlin, Cultural Resources Specialist
NRCS Minnesota State Office
375 Jackson Street, Suite 600
St. Paul, MN 55101
651-602-7907 ph
651-602-7914 fax
Patrick.mcloughlin@mn.usda.gov

Form can be found on line at:

<http://efotg.nrcs.usda.gov/references/public/MN/mncpa48.doc>

or at:

<http://efotg.nrcs.usda.gov/treemenuFS.aspx?Fips=27001&MenuName=menuMN.zip>

Exhibit 5:

Part 509 of the National Watershed Manual

(Still in draft)

Exhibit 6:

Definitions

The following definitions for these terms prevail over definitions in the NRCS General Manual, Parts 401 and 601 (Exhibit 2).

"Conservation Practice" means a specific treatment, such as a structural or vegetative measure, or management technique, commonly used to meet specific needs in planning and implementing conservation, for which standards and specifications have been developed. (USDA Natural Resources Conservation Service National Planning Procedures Handbook, Part 600.6, Amendment 3, dated January 2000)

"Consultation" means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. (36 CFR 800.16(f)).

"Cultural Resource" Cultural resources are the physical evidence of the past activities and accomplishments of people (individual and society). They include prehistoric and historic districts, sites, buildings, structures, documents, or objects. Cultural resources can also include dance forms, aspects of folklife, landscapes, vistas, cultural or religious practices, and locations of cultural value to living societies, known as Traditional Cultural Properties.

"Effect" means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places. (36CFR 800.16(i)).

"Field Investigation" means a pedestrian reconnaissance of the area of potential effect to determine whether sites are present and, if sites are present, whether the sites can be avoided. Pedestrian reconnaissance may include shovel testing in transects not to exceed 10 meter intervals. The field investigation is conducted by a professional, qualified archaeologist. Contracting for a qualified archaeologist and funding for the survey are the responsibility of the landowner, except for Wetland Reserve Program (WRP) projects. NRCS funds field investigations on WRP projects, should the agency decide to proceed with the project.

"Financial Assistance" means funding provided to pay the cost of installation of a conservation practice or practices. When the federal government pays all or part of the cost of installing a practice, it is referred to as "federal financial assistance". Federal financial assistance does not include time and salary of federal employees.

"Historic Property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. (36 CFR 800.16(l)(1))

"Impact" means an effect that could change the qualities of a cultural resource characteristic. Impact and effect are used synonymously in this MOU.

"Initial Review" means a search of relevant background material to discover whether any known sites exist in the project's area of potential effect or whether the area of potential effect is in a high probability location for the presence of a site. Background material includes, but is not limited to, data from the Tribal data base, the State Archaeologist's Office, the State Historic Preservation

Office, and the Bureau of Indian Affairs Regional Office. The review results in a recommendation for the project to proceed as planned or for a field investigation by a professional archaeologist.

"Initial Review Request" means the agency submits pertinent information regarding a project to the Tribal Cultural Resources Coordinator, THPO, and/or to SHPO requesting a recommendation to proceed with the project or a recommendation for a field investigation by a professional archaeologist.

"Practice" refers to "Conservation Practice" as defined above.

"Technical Assistance" means the engineering, agronomic or discipline-specific advice, recommendations and guidance provided to a landowner, cooperator or project sponsor regarding program implementation including, but not limited to, the proper installation of conservation practices. The landowner, cooperator or project sponsor has the option of following or not following such advice, recommendations or guidance.

"Tribal lands" means-- (A) all lands within the exterior boundaries of any Indian reservation; and (B) all dependent Indian communities (National Historic Preservation Act as amended, Section 301(14)).

"Undertaking" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including-- (A) those carried out by or on behalf of the agency; (B) those carried out with Federal financial assistance; (C) those requiring a Federal permit, license, or approval; and (D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency (National Historic Preservation Act as amended, Section 301(7)).